

EXHIBIT D

Farmers Insurance Group

P. O. Box 14513
Lexington, KY 40512
(800) 342-7850



First Class US Mail and Certified Mail, Return Receipt Requested

March 17, 2022

ATH Wonder Logistics LLC
2875 Crescent Parkway
Apt 1530
Atlanta, GA 30339

Our Customer: ATH Wonder Logistics LLC
Our Claim Number: C037506276-0003-01
Policy Number: CA039506P2020
Date of Loss: October 24, 2020
Location of Loss: Carnousite Road, Birmingham AL

RE: Reservation of Rights
Tracy Thompson vs Metropolitan Property and Casualty Insurance Company, ATH Wonder Consulting LLC, Terence or Terrance Gambre and MHC Truck Leasing

Dear ATH Wonder Logistics LLC:

We acknowledge receipt of the above captioned claim seeking coverage for a lawsuit filed against you in Georgia Superior Court, Dekalb County, case number of 22A00426. Farmers Property and Casualty Insurance Company, formerly doing business as Metropolitan Property and Casualty Insurance Company (Farmers) had issued you a Business Automobile Policy, bearing policy number CA039506P2020, which the effective dates from 03/21/2020 to 03/21/2021 (the "policy"). The limits for liability coverage under your policy are \$1,000,000.00 per accident.

A review of the complaint reveals that the lawsuit arises out of an incident that took place on October 24, 2020, in Birmingham, AL. Mr. Thompson alleges that he was a passenger in the motor vehicle that ATH Wonder Consulting was renting or leasing from MHC Truck Leasing. The vehicle being driven by Terence Gambre either had a brake malfunction or was being driven too fast causing him to lose control and strike a tree. The complaint contends that you and MHC Trucking knew that the vehicle had bad brakes and that the brakes were not properly maintained causing Mr. Thompson serious and permanent injuries.

The complaint contends that you failed to properly inspect and maintain the vehicle and that you were negligent in hiring, training, entrusting, retaining, and supervising the driver, Mr. Gambre. The complaint claims Negligence per se and alleges that you are in violation of OCGA 40-6-48. Further, the complaint claims Respondent State Liability of Defendant ATH Wonders negligence against you for the negligence of driver Mr. Gambre. Finally, the complaint claims

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liability against MHC Leasing for failing to properly inspect and keep the vehicle in proper working order.

Mr. Thompson claims that all defendants are liable for his injuries and Farmers is the primary insurance company in this incident.

We need to inform you about a potential coverage problem for your recent claim with us. While we continue to investigate this claim, you need to be aware that Farmers is asserting this Reservation of Rights and notifying you of same based on coverage selected for "Specifically Described "Autos" (7) selected for your automobile and determination of Mr. Gambre and Mr. Thompson's status as an "employee". You verbally advised Farmers that the 2018 Kenmore, vin#2NKHHM6XXJM149834 was rented to replace the 2018 Freightliner M2, Vin#3ALACWFC7JDJP4273, while the Freightliner was being repaired. Additionally, you advised that both Mr. Gambre and Mr. Thompson were "employees" of your company at the time of the loss. To date, we have no supporting documentation and are in need of these supporting documents in order to conclude our coverage investigation.

Farmers imposes certain obligations and duties upon insureds in case of loss, and also imposes certain conditions, limitations, and exclusions that apply to the coverage against which claim may be made in this matter. For this reason, we would like to direct your attention to the terms and conditions of the automobile insurance policy, which states:

Your attention is first directed to that portion of the subject policy entitled **Business Auto Coverage Form Section I – Covered Autos**, which states in pertinent part:

SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

A. Description Of Covered Auto Designation Symbols

7 Specifically Described "Autos"

Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).

B. Owned Autos You Acquire After The Policy Begins

2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:

- a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and

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- b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

- 3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

Your attention is directed to that portion of the subject policy entitled **Section II -Covered Autos Liability Coverage**, which states in pertinent part:

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

...

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

B. Exclusions

This insurance does not apply to any of the following:

3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

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4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
 - (1) Employment by the "insured"; or
 - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury. But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

Finally, your attention is directed to that portion of the subject policy entitled **Section V – Definitions**, which states in pertinent part:

F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker"

I. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short term workload conditions.

The Business Auto Policy insuring clause only affords coverage for bodily injury and property damage to others which is caused by an occurrence that resulted from the ownership, maintenance or use of a covered "auto". Based on the information available, you assert that the vehicle involved in this loss, namely a 2018 Kenmore, vin#2NKHHM6XXJM149834 was rented

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to replace the 2018 Freightliner M2 with Vin#3ALACWFC7JDJP4273, while the Freightliner was being repaired. Additionally, you advised that both Mr. Gamble and Mr. Thompson were "employees" of your company at the time of the loss. To date, we have no supporting documentation of this and are in need of supporting documentation in order to conclude our coverage investigation. Therefore, we are reserving our rights to defend and indemnify you for this loss.

However, while we continue to investigate coverage and by the terms of the above referenced policy, we will pay for your defense as a result of this loss. We have assigned McAngus, Goudelock & Courie to defend you in this matter under claim number C237500148-0001. They can be reached at 678-500-7300. While we will continue to defend and protect your interests arising from this claim, you may want to retain personal counsel to protect your interests. However, should you obtain personal counsel you will be responsible for the payment of the associated legal fees and expenses. If you do choose to hire your own attorney, please ask him or her to contact us.

Our position as set forth in this letter is based upon information we currently have in our possession. We reserve the right to supplement or modify our position upon receipt of additional information and to deny coverage and a defense for any other reasons which may hereinafter arise.

Please be advised that Farmers reserves any and all rights under the afore-mentioned policy, including any and all provisions, exclusions and exceptions. No conduct on the part of Farmers shall be construed as a waiver of any such rights. We reserve the right to revisit this coverage decision if additional information comes to light.

In the event you should wish to discuss this further, please contact me.

Sincerely,

Lynn Maguire
Farmers Property and Casualty Insurance Company, formerly doing business as
Metropolitan Property and Casualty Insurance Company
Sr. Litigation Commercial Adjuster
302-416-8059
lynn.maguire@farmersinsurance.com

CC:

First Class US Mail and Certified Mail, Return Receipt Requested

ATH Wonder Logistics LLC
3393 Holly Hill Pkwy
Ellenwood, GA 30294

Farmers Insurance Group
P. O. Box 14513
Lexington, KY 40512
(800) 342-7850

First Class US Mail and Certified Mail, Return Receipt Requested

Terance Gambre
801 Old Peachtree Road NW
Apt 113
Lawrenceville, GA 30046

First Class US Mail and Certified Mail, Return Receipt Requested

Terance Gambre
2210 Hwy 81
Loganville, GA 30052

First Class US Mail and Certified Mail, Return Receipt Requested

MGC Insurance Defense
270 Peachtree Street NW
Suite 1800
Atlanta, GA 30303